

§ 362 INFORMATION SHEET

THE POWELL LITIGATION GROUP, BK - S-12-15555-MKN
P.C.

DEBTOR BANKRUPTCY # MOTION #

BANK OF NEVADA 7
MOVANT CHAPTER

Certification of Attempt to Resolve the Matter Without Court Action

Moving counsel hereby certifies that pursuant to the requirement of LR 4001(a)(5), an attempt has been made to resolve the matter without court action, but movant has been unable to do so.

Date: Oct. 18, 2012

Signature

Attorney for Movant

PROPERTY INVOLVED IN THIS MOTION: Collateral consisting of all accounts, including funds held in IOLTA account, arising from Bank's properly perfected security interest.

NOTICE SERVED ON: 10/18/2012

DEBTOR(S) DEBTOR(S)' COUNSEL TRUSTEE

DATE OF SERVICE: 10/18/2012

MOVING PARTY'S CONTENTIONS:DEBTOR'S CONTENTIONS:

THE EXTENT and PRIORITY of LIENS:

THE EXTENT and PRIORITY of LIENS:

1ST Terminate the Stay under section 362(d)(1) for payment of \$220,021.19 from to Bank, as Collateral consisting of accounts, including IOLTA account, is fully encumbered by the Bank's properly perfected, first position security interest per UCC-1s.

1ST

2ND Waive the 14-Day Stay Under Rule 4001(a)(3)

2ND

3RD

3RD

4TH

4TH

OTHER

OTHER

TOTAL ENCUMBRANCES:

TOTAL ENCUMBRANCES:

APPRAISAL or OPINION as to VALUE:
Not applicable

APPRAISAL or OPINION as to VALUE:

TERMS of MOVANT'S CONTRACT
with the DEBTOR(S)::

AMOUNT OF NOTE: \$1,921,424.28

INTEREST RATE: 7.00% per annum

DURATION: 36 monts

PAYMENT PER MO.: 35 payments at \$38,146.85 and 1 irregular payment at \$889,172.62

DATE OF DEFAULT: February 1, 2012

AMOUNT IN \$1,861,128.26

ARREARS:

DATE OF NOTICE OF March 14, 2012

DEFAULT:

SPECIAL CIRCUMSTANCES

DEBTOR'S OFFER OF "ADEQUATE
PROTECTION" for MOVANT::

SPECIAL CIRCUMSTANCES:

SUBMITTED BY:

Signature:

1 Richard F. Holley, Esq. (NV Bar No. 3077)
 2 Email: rholley@nevadafirm.com
 3 Ogonna M. Atamoh, Esq. (NV Bar No. 7589)
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 11 *Attorneys for Bank of Nevada*

E-filed on: October 18, 2012

7 **UNITED STATES BANKRUPTCY COURT**
 8

9 **DISTRICT OF NEVADA**
 10

11 In re:
 12 THE POWELL LITIGATION GROUP, P.C.,
 13 Debtor.
 14

15 Case No. BK-S-12-15555-MKN
 16 Chapter 7
 17

**MOTION TO TERMINATE AUTOMATIC
 STAY PURSUANT TO 11 U.S.C. §
 362(d)(1) AND WAIVE 14-DAY STAY
 UNDER FRBP 4001(a)(3)**

18 Date of Hearing: November 20, 2012
 19 Time of Hearing: 10:00 a.m.
 20 Place: Courtroom No. 2, Third Floor
 21 Foley Federal Building
 22 300 Las Vegas Blvd., S.
 23 Las Vegas, NV 89101
 24

Judge: Hon. Mike K. Nakagawa

25 Secured Creditor Bank of Nevada (the “Bank”), through their counsel, Richard F. Holley,
 26 Esq. and Ogonna M. Atamoh, Esq. of the law firm of Cotton, Driggs, Walch, Holley, Woloson &
 27 Thompson, hereby files this Motion to Terminate the Automatic Stay Pursuant to 11 U.S.C. §
 28 362(d)(1) and Waive 14-Day Stay Under FRBP 4001(a)(3). (the “Motion”).
 29

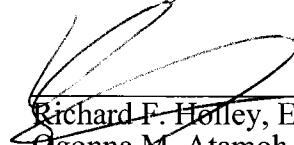
30 This Motion is based on the following grounds and the following reasons: (1) the Bank seeks
 31 an order terminating the automatic stay under Section 362(d)(1) for cause to allow the Trustee to
 32 pay the Bank of \$220,021.19 from the funds in the amount of \$2,615,823.64 currently held in the
 33 IOLTA Account arising from the Bank’s properly perfected, first position security interest in a
 34 portion of the funds held in the IOLTA Account; (2) according to the Trustee’s accounting, of
 35 the \$2,615,823.64 held in the IOLTA account, \$416,521.01 in costs and \$96,282.28 in fees are
 36

1 owing to Powell Litigation (the “PLG Funds”), a portion of which funds are subject to
 2 interpleader actions currently pending in State Court; (3) of the PLG Funds, \$220,021.19 of the
 3 funds are not subject to interpleader actions, consisting of \$190,651.31 of Costs due to Powell
 4 Litigation and \$29,369.88 due and owing to Powell Litigation for Fees. The Bank is seeking
 5 stay termination to allow payment to the Bank from the IOLTA Account in the amount of
 6 \$220,021.19, pursuant to the Bank’s properly perfected, first position security interest in the
 7 funds; and (4) separate and apart from the IOLTA Account, the Trustee is holding \$271,427.57
 8 in the Debtor’s operating account, which the Trustee is using in part to administer the estate,
 9 which funds the Bank is not seeking as part of the stay termination Motion. The Bank is not
 10 waiving its rights to the funds in the Operating Account or any of the other funds remaining in
 11 the IOLTA Account to which medical providers or patients are not entitled.

12 This Motion is based upon the pleadings and records on file herein, the Memorandum of
 13 Points and Authorities set forth below and the exhibits attached hereto, and the Declaration of
 14 Conrad Noriega (the “Noriega Declaration”), a Vice President with Bank in the Legal and
 15 Recovery Department, and the Declaration of Ogonna M. Atamoh, Esq. (the “Atamoh
 16 Declaration”), one of the Bank’s attorneys, filed separately and concurrently with the Court
 17 pursuant to Rule 9014(c)(2) of the Local Rules of Bankruptcy Practice, all papers, and pleadings
 18 on file with this Court, and any oral argument entertained by this Court in connection with the
 19 Motion.

20 DATED this 18th day of October, 2012

21 **COTTON, DRIGGS, WALCH,
 22 HOLLEY, WOLOSON & THOMPSON**



23
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29 *Attorneys for Bank of Nevada*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

3 The Debtor borrowed nearly \$2 million from the Bank to fund the personal injury litigation
4 to pay for litigation fees and costs. The Bank holds a first position, properly perfected security
5 interest in the settlement proceeds held in the IOLTA account derived from the litigations
6 commenced by the Debtor, as evidenced by the Security Agreements and UCC-1 Financial
7 Statements filed with the Nevada Secretary of State on May 13, 2008. The Bank commenced a
8 State Court action for the appointment of receiver over Powell Litigation, as Powell Litigation
9 had failed and/or refused to make any payments to the Bank under the Loan Documents (defined
10 below). One day before the hearing on the Motion to Appoint Receiver was held, Powell
11 Litigation filed for Chapter 7 Bankruptcy relief.

12 David A. Rosenberg was appointed the Chapter 7 Trustee over the Powell Litigation
13 bankruptcy case. The Trustee prepared an accounting to determine which funds belonged to the
14 medical providers, the clients, and the Glen Lerner Firm and the Bank arising out of the retainer
15 agreements and fee splitting agreement with the Glen Lerner Firm and the Bank. In September
16 2012, the Trustee provided the Bank with an accounting of the \$2,615,823.64 in funds held in the
17 IOLTA account, delineating the funds attributable to medical providers, the clients, the Glen
18 Lerner Firm and the Bank. Of the \$2,615,823.64 in the IOLTA account, the Trustee's accounting
19 reflects that there are \$416,521.01 in costs due and owing to Powell Litigation and \$96,282.28 in
20 fees owing to Powell Litigation (the "PLG Funds"), a portion of which are subject to interpleader
21 actions currently pending in State Court.

22 Of the PLG Funds, \$220,021.19 of the funds are not subject to interpleader actions,
23 consisting of \$190,651.31 of Costs due to Powell Litigation and \$29,369.88 due and owing to
24 Powell Litigation for Fees. The Bank is seeking an order terminating the automatic stay for
25 cause under Section 362(d)(1) to allow the Trustee to pay the Bank a portion of the funds held in
26 the IOLTA Account attributable to the Bank in the amount of \$220,021.19, pursuant to the
27 Bank's properly perfected security interest in the funds.

1 This is a Chapter 7 case, and the Bank's Collateral is fully encumbered, leaving no
2 benefit to the estate in connection with the PLG Funds designated in the Trustee's Report as
3 Powell Litigation funds. No other creditors are entitled to receive any portion of the funds
4 designated in the Trustee's Report as the PLG Funds, consisting of \$416,521.01 in costs and
5 \$96,282.28 in fees owing to Powell Litigation, to which the Bank is entitled as a properly
6 perfected secured creditor. Additionally, the waiver of the 14-day stay of the order terminating
7 the stay is appropriate, as the Bank is only seeking a partial payment of \$220,021.19 from the
8 IOLTA Account to which no other creditor is entitled, resulting in a balance of \$292,782.10 of
9 the funds designated in the Trustee's Report as PLG Funds, and leaving an overall balance of
10 \$2,395,802.45 in the IOLTA Account.

II. STATEMENT OF FACTS

THE LOAN TRANSACTION

13 1. On or about September 3, 2008, Paul D. Powell (“Powell”) and Bank entered into
14 a Business Loan Agreement for a loan to Powell in the amount of \$300,000.00 (“Loan”) for
15 business operations, with a maturity date of September 3, 2009. A true and correct copy of the
16 September 3, 2008 Business Loan Agreement and Disbursement Request and Authorization is
17 attached to the Noriega Declaration as **Exhibit “1”**. The Loan was extended by Bank to Powell
18 to finance personal injury litigation by Powell.

19 2. On or about September 3, 2008, Powell executed a Promissory Note in favor of
20 Bank in the principal amount of \$300,000.00 (as amended or supplemented, the “Note”). A true
21 and correct copy of the Promissory Note is attached to the Noriega Declaration as **Exhibit “2”**.

22 3. Pursuant to the terms of the Note, the unpaid principal balance bears interest at a
23 variable rate of 1.500 percentage points over the Prime Rate as published in the Wall Street
24 Journal (the “Index”). The initial and floor interest rate was 7.5% per annum based on a 360-day
25 year. The Note provides a single payment of the entire unpaid principal balance, plus accrued
26 interest at maturity and for monthly payments of all accrued interest beginning October 3, 2008.
27 The maturity date under the Note was September 3, 2009 (“Maturity Date”).

1 4. On or about October 13, 2008, Borrower and Bank renewed the loan in the
2 amount of \$300,000.00, based upon the Note. Borrower and Bank also entered into a Change in
3 Terms Agreement modifying the Note. The Note was modified to extend the Maturity Date to
4 April 13, 2014, to discontinue the revolving line of credit feature, to change the borrower's name
5 to Powell Litigation, to add collateral, to add the guaranty of Powell, to change the payment
6 schedule to interest only payments from November 13, 2008 to April 13, 2009 and then
7 payments of principal and interest each month beginning May 13, 2009, and to raise the floor
8 interest rate to 8.00%. A true and correct copy of the October 13, 2008 Business Loan
9 Agreement, Disbursement Request and Authorization, and Change in Terms Agreement is
10 attached to the Noriega Declaration as **Exhibit "3"**.

11 5. On or about February 27, 2009, Borrower and Bank renewed the loan and
12 increased the principal amount to \$500,000.00, based upon the Note. Borrower and Bank also
13 entered into a Change in Terms Agreement modifying the Note. The Note was modified to
14 increase the principal amount to \$500,000.00, to change the payment schedule to interest only
15 payments from March 13, 2009 to April 13, 2009 and then payments of principal and interest
16 each month beginning May 13, 2009, and to lower the floor interest rate to 7.25%. A true and
17 correct copy of the February 27, 2009 Business Loan Agreement, Disbursement Request and
18 Authorization, and Change in Terms Agreement is attached to the Noriega Declaration as
19 **Exhibit "4"**.

20 6. On or about July 8, 2011, Borrower and Bank renewed the loan and increased the
21 principal amount to \$1,921,424.28, based upon the Note. Borrower and Bank also entered into a
22 Change in Terms Agreement modifying the Note. The Note was modified to increase the
23 outstanding principal amount to \$1,921,424.28, to extend the Maturity Date to July 8, 2014, to
24 release certain real property as collateral, to change the payment schedule to payments of
25 principal and interest each month beginning August 8, 2011, and to change the variable interest
26 rate to a fixed rate of 7.00% per annum on a 360-day year. A true and correct copy of the July 8,
27 2011 Business Loan Agreement, Disbursement Request and Authorization, and Change in Terms
28 Agreement is attached to the Noriega Declaration as **Exhibit "5"**.

1 7. To secure the Note, on or about September 3, 2008, Powell executed a
2 Commercial Security Agreement in favor of the Bank. Also to secure the Note, on or about
3 October 13, 2008, Borrower executed a Commercial Security Agreement in favor of the Bank.
4 True and correct copies of the Commercial Security Agreements are attached to the Noriega
5 Declaration as **Exhibit “6”**. The Commercial Security Agreements grant a security interest to the
6 Bank in the following collateral (the “Collateral”):

7 All Inventory, Accounts, Equipment and General Intangibles
8 recorded on May 13, 2008 filing no. 2008015389-7 with the
Nevada Secretary of State

9 In addition, the word “Collateral” also includes all the following,
10 whether now owned or hereafter acquired, whether now existing or
hereafter arising, and wherever located:

11 (A) All accessions, attachments, accessories, tools, parts, supplies,
12 replacements of and additions to any of the collateral described
herein, whether added now or later.

13 (B) All products and produce of any of the property described in
14 this Collateral section.

15 (C) All accounts, general intangibles, instruments, rents, monies,
16 payments, and all other rights, arising out of a sale, lease,
consignment or other disposition of any of the property described
in this Collateral section.

17 (D) All proceeds (including insurance proceeds) from the sale,
18 destruction, loss, or other disposition of any of the property
19 described in this Collateral section, and sums due from a third
party who has damaged or destroyed the Collateral or from that
party’s insurer, whether due to judgment, settlement or other
process.

20 (E) All records and data relating to any of the property described in
21 this Collateral section, whether in the form of a writing,
22 photograph, microfilm, or electronic media, together with all of
23 Grantor’s right, title, and interest in and to all computer software
required to utilize, create, maintain, and process any such records
or data on electronic media.

24 8. The Bank holds a properly perfected security interest in the Collateral as
25 evidenced by the UCC-1 Financial Statements filed with the Nevada Secretary of State on May
26 13, 2008, as Document No. 2008015389-7, on September 12, 2008, as Document No.
27 2008028251-1, on October 16, 2009 as Document No. 2008032147-6, and on May 27, 2009, as
28

1 Document No. 2009013086-5. True and correct copies of the UCC-1s are attached to the
 2 Noriega Declaration as **Exhibit “7”**.¹

3 9. The Loan was unconditionally guaranteed by Powell pursuant to personal
 4 guaranties executed on October 13, 2008, February 27, 2009, and July 8, 2011 (collectively the
 5 “Guaranties”). True and correct copies of the Guaranties are attached to the Noriega Declaration
 6 as **Exhibit “8”**.

7 **THE LOAN DEFAULTS**

8 10. Borrower was in default under the Loan Documents by failing to pay, or cause to
 9 be paid, all of the past due amounts and cure all other defaults within the applicable cure period
 10 set forth in the Loan Documents. See Noriega Declaration.

11 11. After the defaults occurred, the Bank attempted to communicate with Borrower
 12 regarding the outstanding obligations owing to Bank, but after an initial meeting, Borrower
 13 failed and refused to produce promised financial statements and to respond to emails and
 14 telephone calls.

15 12. As a result of this lack of communication, on March 14, 2012, Bank sent to
 16 Borrower a notice of default and demand for payment letter (“Borrower Default Letter”)
 17 detailing the monetary defaults under the Loan Documents. A true and correct copy of the
 18 Borrower Default Letter is attached to the Noriega Declaration as **Exhibit “9”**.

19 13. On March 14, 2012, Bank also sent to Powell, as the Guarantor, a notice of
 20 default and demand for payment letter as a result of Borrower’s default (“Guarantor Default
 21 Letter”). A true and correct copy of the Guarantor Default Letter is attached to the Noriega
 22 Declaration as **Exhibit “10”**.

23 14. Notwithstanding the Borrower Default Letter and Guarantor Default Letter,
 24 Borrower and Powell failed and refused to pay the outstanding indebtedness, to provide any of
 25 the requested information, or to pay requested past due payments that I was willing to

26 1 The Note, Business Loan Agreements, Disbursement Request and Authorizations, Changes In Terms Agreements,
 27 Commercial Security Agreements, UCC-1 Financial Statements, and all other loan documents evidencing, securing
 or modifying the Loan are referred to collectively as the “Loan Documents”.

28

1 recommend the Bank accept for an extension of the demand letter deadlines to allow more time
 2 to work out a possible solution.

3 **STATE COURT ACTION TO APPOINT RECEIVER**

4 15. On April 13, 2012, the Bank commenced an action in State Court in the Business
 5 Court Division of the Eighth Judicial District Court, Clark County, Nevada, for the appointment
 6 of a receiver.

7 16. On April 13, 2012, the Bank filed a Motion for Appointment of Receiver, or in
 8 the alternative, for Temporary Restraining Order, Preliminary and Injunctive Relief and
 9 Prejudgment Writ of Possession, which hearing was scheduled to be heard on April 24, 2012,
 10 and continued to May 10, 2012, due to a department reassignment.

11 **BANKRUPTCY**

12 17. On May 9, 2012 (the “Petition Date”), one day before the hearing on the Motion
 13 to Appoint Receiver, Powell Litigation filed a Chapter 7 bankruptcy petition for relief captioned
 14 *In re Powell Litigation Group, P.C.* (Case No. BK-S-12-15555-MKN) (the “PLG Bankruptcy”),
 15 currently pending in the United States Bankruptcy Court for the District of Nevada.

16 18. On October 10, 2012, David A. Rosenberg, the Chapter 7 Trustee (the “Trustee”),
 17 filed a Trustee’s Notice of Assets and Notice to File Proof of Claim [Dkt. No. 83].

18 19. On October 11, 2012, the Bank filed a Proof of Claim [POC # 8], identifying its
 19 claim as of the Petition Date to be \$1,861,128.26, the total unpaid principal, interest, and late
 20 charges (exclusive of legal fees, costs and other charges and reserves) required under the Loan
 21 Documents are as follows:

22	Current Outstanding Principal:	\$ 1,786,468.53
23	Accrued Interest:	\$ 66,484.11
24	Late Charges:	\$ 8,128.62
25	UCC Fee:	\$ 47.00
26	Total Debt:	\$ 1,861,128.26

27 Interest continues to accrue on the unpaid principal balance at the default rate of \$595.49 per
 28 day. The daily regular interest was \$347.37. See Noriega Declaration.

1 **TRUSTEE'S ACCOUNTING**

2 20. In September 2012, the Trustee prepared an accounting report of the funds held in
 3 the IOLTA account, a true and correct copy of which is attached to the Noriega Declaration as
 4 **Exhibit "11".**

5 21. According to the information provided by the Trustee, the estate currently holds
 6 \$2,615,823.64² in the IOLTA account for reimbursement of costs in litigation financed by Bank,
 7 some of which is subject to interpleader actions pending in state court commenced at the
 8 direction of the Trustee.

9 22. On September 26, 2012, counsel for the Bank met with counsel for the Trustee,
 10 Howard Kim, Esq., and Cody Sutton, who is employed by the Trustee, as well as counsel for the
 11 Glen Lerner Firm, Brigid Higgins, Esq. to receive clarification on the Trustee's accounting of the
 12 funds held in the IOLTA account Powell Litigation received settlements from which legal fees
 13 and costs from judgments in litigation were to be paid. These settlement funds and legal fees
 14 constitute the Bank's Collateral, but Powell Litigation failed to remit payment to Bank pre-
 15 petition.

16 23. Of the \$2,615,823.64 in the IOLTA Account, the Trustee's accounting reflects
 17 that there are \$416,521.01 in costs due and owing to Powell Litigation and \$96,282.28 in fees
 18 owing to Powell Litigation (the "PLG Funds").

19 24. Of the PLG Funds, \$220,021.19 of the funds are not subject to interpleader
 20 actions, consisting of \$190,651.31 of Costs due to Powell Litigation and \$29,369.88 due and
 21 owing to Powell Litigation for Fees. A true and correct copy of the chart identifying interpleader
 22 and non-interpleader funds is attached to the Noriega Declaration as **Exhibit "12".**

23 **REQUEST FOR STAY TERMINATION FOR RELEASE OF PORTION OF IOLTA FUNDS**

24 25. The Bank is requesting an order terminating the automatic stay for payment in the
 25 amount of \$220,021.19 to the Bank from the IOLTA Account from the \$2,615,823.64 in the
 26

27 2 The IOLTA Account is currently held with Bank of Nevada, and as of October 18, 2012, the balance held in the
 28 IOLTA Account is \$2,953,119.26. See Noriega Declaration.

1 IOLTA Account, which funds constitute a portion of the Bank's Collateral arising from the
 2 Bank's properly perfected security interest in all of the Debtor's "Accounts".

3 26. The Bank's Collateral includes, but is not limited to, the IOLTA Account, as set
 4 forth in the Commercial Security Agreements and UCC-1s, attached to the Noriega Declaration
 5 as **Exhibits "6" and "7"**, respectively.

6 27. The Bank is entitled to the \$416,521.01 in costs due and \$96,282.28 in fees held
 7 in the IOLTA Account designated in the Trustee's Report as PLG Funds, and by way of the
 8 Motion, is currently only seeking stay termination for payment of a portion of the funds in the
 9 IOLTA Account not subject to the pending interpleading actions. See Noriega Declaration.

10 28. In the event the automatic stay is terminated to allow the Bank to receive partial
 11 payment of \$220,021.19 from the IOLTA Account, \$292,782.10 of the funds designated in the
 12 Trustee's Report as PLG funds will remain in the IOLTA Account, which remaining funds are
 13 still the subject of pending interpleader actions. See Noriega Declaration.

14 29. Upon resolution of the remaining interpleading actions, the Bank will renew its
 15 Motion to Terminate the Automatic Stay for payment of the remaining funds in the IOLTA
 16 Account or any other funds to which the Bank is entitled pursuant to its properly perfected
 17 security interest. See Noriega Declaration.

18 **TRUSTEE HOLDING \$271,427.57 IN OPERATING ACCOUNT**

19 30. The Trustee, through his counsel, reported that he is currently holding
 20 \$271,427.57 in the Debtor's Operating Account, a portion of which is to be used by the Trustee
 21 to administer the estate, including, but not limited to, the pending interpleader actions, and any
 22 future preference and fraudulent transfer actions the estate may commence. See Atamoh
 23 Declaration.

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III.

LEGAL ARGUMENT

A. Cause Exists to Terminate the Stay Under Sections 362(d)(1) Because the Collateral is Fully Encumbered by the Bank's Properly Perfected, First Position Security Interest.

The Bank requests relief from the automatic stay pursuant to section 362(d)(1) because cause exists to terminate stay. Cause exists to terminate the stay under Section 362(d)(1) because the Collateral at issue, consisting of all “accounts” of Powell Litigation, which includes the IOLTA Account that is the subject of this Motion, is fully encumbered by the Bank’s properly perfected, first position security interest. Section 362(d)(1) provides as follows:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

This is a Chapter 7 case, and the Bank's Collateral is fully encumbered, leaving no benefit to the estate in connection with the PLG Funds designated in the Trustee's Report as Powell Litigation funds. As set forth in greater detail in the Noriega Declaration, there is no benefit to the estate for the Chapter 7 Trustee to liquidate and administer the Collateral, because the Bank holds a properly perfected security interest in the Collateral consisting of Powell Litigation's "accounts", which includes the funds in the IOLTA Account not attributable to medical providers and patients. See Noriega Declaration.

No other creditors are entitled to receive any portion of the funds designated in the Trustee's Report as the PLG Funds, consisting of \$416,521.01 in costs and \$96,282.28 in fees owing to Powell Litigation, to which the Bank is entitled as a properly perfected secured creditor. See Noriega Declaration. Because no other creditors are entitled to any portion of the PLG Funds designated in the Trustee's Report, and there are sufficient funds in the Operating Account to provide the Trustee with funds to administer the case and commence future litigation in the bankruptcy case, the Bank's request to terminate the automatic stay to allow payment to

1 the Bank of a portion of the IOLTA Account not subject to any interpleader actions is
 2 appropriate at this time. See Noriega Declaration.

3 The Bank seeks an order from this Court terminating the automatic stay to allow the
 4 Trustee to pay the Bank a partial payment of \$220,021.19 from the IOLTA Account, leaving a
 5 balance of \$292,782.10 of the funds designated in the Trustee's Report as PLG Funds. The
 6 balance of \$292,782.10 will remain in the IOLTA Account subject to the resolution of pending
 7 interpleader actions. See Noriega Declaration. Thus, cause exists to terminate the stay under
 8 Section 362(d)(1).³

9 **B. Cause Exists to Waive the 14-Day Stay Under Rule 4001(a)(3).**

10 In addition to stay termination for payment of a portion of the Bank's Collateral, the
 11 Bank also seeks the waiver of the 14-Day stay of the order terminating the stay under Rule
 12 4001(a)(3). There is no legitimate reason for further delay in the Trustee's payment to the Bank,
 13 where there are no competing claims to the Bank's funds in the IOLTA Account as designated in
 14 the Trustee's Report as PLG Funds. See Noriega Declaration. The waiver of the 14-day stay of
 15 the order terminating the stay is appropriate, as the Bank is only seeking a partial payment of
 16 \$220,021.19 from the IOLTA Account to which no other creditor is entitled, resulting in a
 17 balance of \$292,782.10 of the funds designated in the Trustee's Report as PLG Funds, and
 18 leaving an overall balance of \$2,395,802.45 in the IOLTA Account. See Noriega Declaration.
 19 Because this is a Chapter 7 case, and there is no reorganization in the Debtor's case, the Bank
 20 requests that this Court waive the 14-Day stay under Rule 4001(a)(3), as there appears to be no
 21 reason to stay the order terminating the automatic stay. Under these circumstances, waiver of the
 22 14-day stay is appropriate.

23 ...

24 ...

25 ...

26

27 ³ The Bank is not waiving its rights to the funds in the Operating Account, as the Bank's Security Agreement and
 28 filed UCC-1s entitle the Bank to a properly perfected, first position, security interest to all "Accounts" of PLG as
 Collateral, which accounts include the Operating Account and the IOLTA Account. See Noriega Declaration.

III. CONCLUSION

Based upon the foregoing, cause exists to terminate the stay under Sections 362(d)(1), and for an order allowing the Bank to receive \$220,021.19 from the IOLTA Account, which funds constitute a portion of the Bank's Collateral pursuant to a properly perfected, first position security interest as set forth in the Commercial Security Agreements and UCC-1s. The Bank also seeks an order for the waiver of the 14-day stay of the order terminating the stay under Rule 4001(a)(3).

DATED this 18th day of October, 2012.

COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON

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